

## **On Second Thought... I'm Fighting On!**

### **As of Today and Until I Report Otherwise... I'm Not Suspended In Kentucky or Ohio**

### **I Plan an Appeal to U.S. Supreme Court**

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Many of you have had a court hearing, unemployment hearing, workers compensation hearing, social security disability hearing, grievance hearing with a union, attended a city council meeting or other public hearing. One of the common denominators of all those hearings? An official record by stenographer and/or audiotape and/or videotape. Why? Because it's important to have a record to appeal from. It's part of the due process requirements which are sacred to this country.

Imagine a lawyer facing discipline would not be allowed to make the same record as all those examples I just gave? Well, the Kentucky Bar Counsel, the Kentucky Board of Governors and the Rules of the Kentucky Supreme Court give the Board of Governors the right to say no to an attorney from having a court reporter, audiotape or videotape of his Board of Governors hearing.

In my first suspension, the Board did not allow my videographer to videotape claiming I did not request it in time. This time, I asked in time, but they said no. Incredible injustice. This was in part the basis of my argument to the Kentucky Supreme Court.

I disagree with the Kentucky Supreme Court on the issue of the court reporter or videographer for the record. They state in the opinion: "The Court sees no prejudice in this practice as it relates to this Court's review of the matter. When this Court undertakes review of a disciplinary proceeding, whether at a party's urging under SCR 3.370(7) or the Court's own motion under SCR 3.370(8), it is not bound as it would be in a pure appeal. The Court is not required to defer to the findings of fact or conclusions of law of the trial commissioner or the Board. Rather, in disciplinary proceedings, those entities act as administrative agents of this Court to produce a **record** and a recommendation. Once this Court undertakes review of a case, it "shall enter such orders or opinion as it deems appropriate on the entire **record**." SCR 3.370(8). Thus, the demeanor and actions of the Board and Bar Counsel are not relevant. This Court instead decides the case de novo itself based on the **record** developed below. Any potential unfairness shown by a Board member or by Bar Counsel is alleviated by this Court's independent review of a lawyer's alleged misconduct."

The Kentucky Supreme Court references three times the record: "to produce a record," "on the entire record" and "based on the record developed below." This is a contradiction. The Court admits a record is important while at the same time concludes it's not.

Towards the end of the opinion the Court concludes:

"Deters has received due process from these proceedings."

I don't know how they can state this without me being given the opportunity for a record of a Board of Governors hearing. For example, the Board of Governors drafted a written report. I had no record to point out their mistakes.

Last year I had to serve 52 days more than the 60 days ordered because Bar Counsel was allowed to extend it in part on these two charges. The Court explains the 52 days away by stating that the disciplinary cases were not the only reason for the objection to extend last years suspension. This means they admit it was part of it yet give me no credit and there is no question it was the main reason. They are attempting to punish me twice for the same conduct.

The Small Claims Court, the District Court, the Circuit Court, the Appeals Court and the Kentucky Supreme Court all require a record. Not the Bar Association for law discipline? Sorry. It's wrong. The Medical Board allows it for doctors. Doctors aren't even the "defenders of liberty" (sarcasm) lawyers are. I've decided to ask the Kentucky Supreme Court to reconsider and then if they do not, I'm filing with the US Supreme Court where I'll ask them to hear the case.

The allegations against me in these two dated matters involved allegations filed in a Complaint or lawsuit. Guess what? It's not a perfect process. You make mistakes. I'm unaware of one single lawyer in the tri-state who has ever been sanctioned or disciplined ever for this.

At the Board of Governor's hearing, I pointed out I think it's hypocrisy that defense lawyers every day in Kentucky file Answers to lawsuits where they claim things they know are false like defenses know they apply. Two or three members of the Board laughed and said: "Yeah we do that and we will keep doing that." They thought it was funny. Then they judged me and didn't give me the record I wanted to base my argument in part to the Kentucky Supreme Court. The Court has ruled that's OK. Well, it's not OK.

I owe it to myself and other lawyers who face these same issues in the future to battle on. And I shall. I'm right. The cause is just. And as TR said: "Aggressive fighting for the right is the noblest sport the world affords."